

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL CASE NO. 2:11cv49

LARRY DARREN GARLAND,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

ORDER

THIS MATTER is before the Court on the Plaintiff's Notice of Motion and Motion for Judgment on the Pleadings [Doc.11] and the Defendant's Motion for Summary Judgment [Doc. 12].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell was designated to consider these motions and to submit recommendations for their disposition.

On February 8, 2013, the Magistrate Judge filed a Memorandum and Recommendation in which he recommended granting in part the Plaintiff's Motion for Judgment on the Pleadings and remanding the Commissioner's

decision for further administrative proceedings. [Doc. 14]. The parties were advised that any objections to the Magistrate Judge's conclusions and recommendations were to be filed in writing within fourteen days of service of the Recommendation and that failure to file objections to the Memorandum and Recommendation would preclude the parties from raising any objection on appeal. [Id., at 18]. The period within which to file objections expired on February 25, 2013 and no written objections to the Memorandum and Recommendation have been filed by either party.

Having conducted a careful review, the Court concludes that the Magistrate Judge's recommendation is supported by the record and the law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation and finds that remand is appropriate.¹ Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

ORDER

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion for Judgment on the Pleadings [Doc. 11] is hereby **GRANTED** in part and **DENIED** in part.

¹ The case is remanded for further administrative proceedings consistent with this Order. To the extent that the Plaintiff assigned other errors to the Commissioner's decision, the Motion for Judgment on the Pleadings is denied.

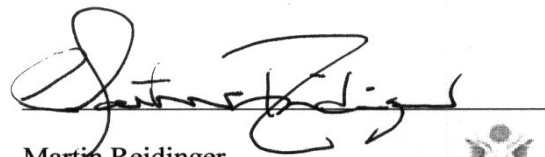
IT IS FURTHER ORDERED that the decision of the Commissioner of Social Security is hereby **REVERSED** and the case is hereby **REMANDED** pursuant to Sentence Four of 42 U.S.C. Section 405(g) for further administrative proceedings at which the following shall be considered:

1. The Administrative Law Judge (ALJ) shall consider and specify the weight, including the reasoning in support thereof, to be accorded the medical opinion of Dr. Timothy L. Johnson;
2. The ALJ shall considered the decision of the North Carolina Department of Health and Human Services and shall set forth his rationale for either accepting or discrediting the same; and
3. The ALJ shall complete his sequential evaluation if necessary.

IT IS FURTHER ORDERED that the Defendant's Motion for Summary Judgment is hereby **DENIED**.

The Clerk of Court shall enter separate Judgment of Remand simultaneously herewith. The Clerk of Court is notified that this is a final judgment closing the case.

Signed: February 27, 2013


Martin Reidinger
United States District Judge

